



April 27, 2007

Ex Parte Presentation

Via Electronic Submission

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, DC 20554

Re: Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, WT Docket 06-49

Dear Ms. Dortch:

On April 23, 2007, Telesaurus, controlled by Warren Havens, submitted an e-mail Havens sent to the Commissioners and Commission staff in the above-captioned proceeding.¹ Progeny submits that Havens' filing represents yet another attempt to stall this proceeding. It is procedurally flawed and not germane to the above-captioned rulemaking.

Havens' filing contains assertions that: (1) Reiterate previous arguments that Progeny has fully addressed in its Comments, Reply Comments and Ex Parte filings; (2) Misrepresent the purpose and conclusion of cited studies; (3) Make unsubstantiated, *ad hominem* attacks on Progeny and the integrity of the Commission.² These arguments are irrelevant and merely represent attempts to stall this proceeding, which is ripe for decision.³ The Commission should dismiss the filing as procedurally flawed.

Havens has repeatedly disregarded the Commission's procedures and attempted to inject non-germane matters into the proceeding.⁴ This latest e-mail, which makes unsubstantiated and unfounded allegations against Progeny, its principal owner, an affiliated party, and the integrity of the

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¹ E-mail to Commissioners, aides, and Bureau staff sent by Warren Havens (April 23, 2007) (The E-mail).

² Havens' filing also does not contain all the attachments as referenced within itself.

³ The Commission should only consider relevant comments and material of record in taking final action. *See*, 47 C.F.R. §1.425.

⁴ *See Ex Parte* Presentation by Progeny LMS, In the Matter of Amendment of the Commission's Part 90 Rules, WT Docket 06-49 (August 1, 2006).



Commission and its staff, is simply a further effort to try to redirect these proceedings to matters that are beyond the scope of issues raised by the Commission in last year's Notice of Proposed Rulemaking. These arguments and allegations, should they be considered at all, belong elsewhere and should not be confused with this instant service rule proceeding.⁵ Moreover, his continued use of such tactics come close to crossing the line into abuse of process.⁶

Finally, Havens' e-mail filing is procedurally defective. Under the Commission's rules, any written *ex parte* presentation "must be labeled as an *ex parte* presentation."⁷ Havens' filing does not satisfy this regulatory requirement. Thus, the Commission may impose any sanctions that may be appropriate.⁸

Progeny is confident that the Commission will see Havens' filing as the unwarranted delaying tactic that it is and disregard it as both procedurally flawed and extraneous to the NPRM. The Commission has a full record to bring this proceeding to a conclusion without being distracted by Havens' arguments and unsubstantiated attacks on Progeny and the Commission.

In accordance with Section 1.1206(b) of the Commission's Rules, please accept this filing. Should you have any questions or concerns in connection with this submission, please contact me at (202) 371-2800.

Sincerely,

Janice Obuchowski

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⁵ Havens has tried similar tactics in other FCC proceedings in the past to stall the proceedings or inject non-germane material. The Commission has steadfastly rejected such attempts in those proceedings. *See generally*, supra note 2.

⁶ *See* Policy Regarding Character Qualifications In Broadcast Licensing, *Report, Order and Policy Statement*, 102 FCC 2d 1179 (1986), *recon. granted in part and denied in part*, 1 FCC Rcd. 421 (1986), *appeal dismissed mem. sub nom National Assoc. for Better Broadcasting v. FCC*, No. 86-1179 (D.C. Cir. June 11, 1987) (*Character Policy Statement*) (strike pleadings, harassment of opposing parties, and violation of *ex parte* rules constitute abuse of process). The *Character Policy Statement* has been applied by the Commission in non-broadcast situations. *See e.g., Western Telecommunications, Inc.*, 3 FCC Rcd. 6405, 6406 ¶ 12 (1988) (*Character Policy Statement* used to evaluate microwave radio licensees); *A.S.D. Answer Service, Inc.*, 1 FCC Rcd. 753, 754 ¶ 12 (1986) (*Character Policy Statement* applied to domestic public radio service application).

⁷ 47 C.F.R. §1.1206(b)(1).

⁸ 47 C.F.R. §1.1216(a).